



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	07/01/03	Bill No:	AB 1153
Tax:	Administration	Author:	Bermudez
Board Position:	Support, Board co-sponsored	Related Bills:	AB 215 (Leslie)

BILL SUMMARY:

Among other things, the Board co-sponsored provisions of the bill would provide that any person, other than those authorized, who willfully wears or uses a badge, photographic identification card, or insignia of a state, county, city, special district, or city and county officer or employee, with the intent of impersonating, is guilty of a misdemeanor. This bill would also provide that any person who willfully wears, uses, makes, sells, loans, gives, or transfers any badge, photographic identification card, or insignia, which falsely purports to be for the use of a state, county, city, special district, or city and county officer or employee, is guilty of a misdemeanor.

As sponsored by the County of Los Angeles, this bill would also provide that any person who willfully wears, exhibits, or uses the authorized uniform of an officer or member of a fire department or deputy state fire marshal, as specified, or any person who person who willfully makes, sells, loans, gives, or transfers any badge, insignia, emblem, device, label, certificate, card, or writing of an officer or member of a fire department or a deputy state fire marshal, with the intent of impersonating an officer or member of a fire department, is guilty of a misdemeanor.

This analysis will address only those provisions of the bill that pertain to the Board.

Summary of Amendments

Since the previous analysis, this bill was amended to remove the threat of imprisonment and instead specify that any person who makes or sells a badge, which falsely purports to be for the use of a state, county, city, special district, or city and county officer or employee, is subject to a fine only of an amount not to exceed \$15,000.

ANALYSIS

Current Law

Under existing Section 470a of the California Penal Code, altering, falsifying, forging, duplicating, or counterfeiting a driver's license or identification card issued by a governmental agency, with the intent to commit forgery, is punishable as a misdemeanor or felony. Under Section 472 of the California Penal Code, any person, with intent to defraud another, who forges or counterfeits the seal of this State, or who falsely makes any impression of such seal, is guilty of forgery. Section 483.5 of the California Penal Code makes it a misdemeanor or felony to make, sell, furnish, or use a "deceptive identification document." A "deceptive identification document" is a document not issued by a federal or state governmental agency and could reasonably deceive an ordinary person into believing that it is issued by a government agency,

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including, but not limited to, a driver's license, identification card, birth certificate, passport, or social security card.

Chapter 8 (Sections 528 through 539) of the California Penal Code relates to crimes involving false personation. Section 529 makes it crime to falsely personate another under specified circumstances. Section 529.5 makes it a misdemeanor to manufacture, sell, or transfer, any document, purporting to be a government-issued identification card or driver's license, which could reasonably deceive an ordinary person into believing that it was issued by a government agency. Section 530.5 relates to identity theft. Under this section, any person who willfully obtains personal identifying information of another person, and uses that information unlawfully, is guilty of a public offense, punishable as a misdemeanor or felony.

Proposed Law

This bill would add Section 538g to the Penal Code to do the following:

- Any person, other than a state, county, city, special district, or city and county officer or employee, who willfully wears, exhibits, or uses the authorized badge, photographic identification card, or insignia of a state, county, city, special district, or city and county officer or employee, with the intent to fraudulently personate such a person, is guilty of a misdemeanor.
- Any person, other than a state, county, city, special district, or city and county officer or employee, who willfully wears, exhibits, uses, makes, sells, loans, gives, or transfers any badge, identification card, or insignia of a state, county, city, special district, or city and county officer or employee, which falsely purports to be for the use of a state, county, city, special district, or city and county officer or employee or which so resembles the authorized badge, photographic identification card, or insignia of a government employee, is guilty of a misdemeanor, except that any person who makes or sells a badge, as specified, is subject to a fine of an amount not to exceed \$15,000.
- These provisions do not apply to either of the following: (1) use of a badge solely as a prop for a motion picture, television, or video production, or an entertainment or theatrical event; or (2) a badge supplied by a recognized employee organization as defined in Section 3501 of the Government Code or a state or international organization to which it is affiliated.

In General

Identity theft and identity fraud are the fastest growing crimes in the United States. Various federal and state agencies have established web sites to alert taxpayers to tax scams and fraud schemes involving identity theft and other privacy related crimes. The Treasury Inspector General for Tax Administration investigates a wide variety of offenses, including the misuse of IRS insignia, seals, and symbols and identity theft related to tax administration.

In May 2002, the Internal Revenue Service (IRS) reported a fraudulent scheme to steal taxpayers' identity and financial data. This scheme involved the distribution of fictitious bank correspondences and IRS forms in an attempt to trick taxpayers into disclosing personal and banking data. In this scam, a letter claiming to be from the taxpayer's bank stated that the bank was updating its records in order to exempt the taxpayer from reporting interest or having tax withheld on interest paid on his or her bank or other financial accounts. The letter urged the taxpayer to complete and mail the forms within

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a specified number of days or lose the reporting and withholding exemption. The fictitious IRS forms contained the IRS insignia and requested personal data such as, social security number or passport number, bank account number, and mother's maiden name. The fictitious forms attempted to mimic the genuine IRS forms, but requested personal data not contained on the actual IRS forms.

The California legislature has enacted many statutes on privacy issues (credit card, credit reporting, debt collection practices, check writing, computer crime, electronic commerce, Department of Motor Vehicle (DMV) records, employment records, medical records, and more) to protect consumers from privacy-related offenses. There are several statutes related to false personation. Any person who manufactures, possesses, or sells certain documents for the purpose of falsifying identities, such as altered birth certificates, driver's licenses, or identification cards, is guilty of a crime. Any person who uses an authorized badge of a peace officer, officer or member of a fire department, or an employee of a public utility company or district, with the intent of fraudulently personating such officer or employee, is guilty of a crime.

However, none of these existing statutes specifically make it a crime to misuse a state, county, city, or special district badge. Because of the growing increase in identity theft and fraudulent schemes, legislation is needed to deter the potential misuse of any badge of a public officer or employee.

Additionally, since September 11th, 2001, public agencies are responsible for developing their own protective measures and other antiterrorism or self-protection plans. Part of these protective measures is to tighten access to public buildings. Currently, there are no statutes that make it a crime to wear or use a state badge with the intent of fraudulently personating a state employee. As such, legislation is necessary in order to deter persons from making and using state badges to gain access to state buildings.

COMMENTS:

1. Sponsor and purpose. This bill is co-sponsored by the County of Los Angeles and the Board of Equalization in an effort to extend certain provisions of the Penal Code for peace officers and fire department personnel to those public employee positions that require the employee to carry a badge in the performance of his or her work (e.g., health and safety officers). The County of Los Angeles noted that there were no statutes that made it crime to use a public employee's badge for fraudulent purposes. Therefore, the author and the County of Los Angeles introduced this bill to provide a separate section of law to make it a crime to wear or use any state, city, county, and special district officers' and employees' badges or photographic identification cards for fraudulent purposes. The author and sponsor were willing to take suggested amendments by Board staff to include "insignia" to the new section of law and, therefore, conform the bill to a legislative proposal adopted by the Board. Specifically, the Board Members voted to sponsor similar legislation in order to deter the potential fraudulent use of a Board employee's badge to gain access to personal taxpayer information.

Additionally, the County of Los Angeles wanted legislation to extend similar provisions for peace officers to officers and members of fire departments. Namely, the provisions that make it crime to manufacture, sell, loan, give, or transfer an

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authorized badge of a peace officer would be extended to a fire department officer or member. According to the sponsor, there have been incidences of stolen fire department badges being sold on eBay. This bill would deter such activities.

2. **Key amendments.** The **July 1, 2003 amendments** removed the penalty of imprisonment and specify that any person who makes or sells a badge as described under subdivision (b) of Section 538g is subject to a fine only of an amount not to exceed \$15,000. Section 538g, subdivision (b), would provide that any person who willfully wears, exhibits, uses, makes, sells, loans, gives, or transfers any badge, photographic identification card, or insignia, which falsely purports to be for the use of a state, county, city, special district, or city and county officer or employee, is guilty of a misdemeanor.

The **June 18, 2003 amendments** do the following: (1) under the provisions related to making, selling, loaning, giving, or transferring a badge, photographic identification card, or insignia, delete the reference to an "unauthorized or replica badge," and specify that making, selling, loaning, giving, or transferring a badge, photographic identification card, or insignia, which falsely purports to be for the use of a state, county, city, special district, or city and county officer or employee, is a misdemeanor; and (2) delete the reference to "fictitious or historical visual depiction of either a public officer or employee" and instead provide that the provisions of this bill would not apply when a badge is used solely as a prop for a motion picture, television, or video production, or an entertainment or theatrical event. The **April 21, 2003 amendments**, at the request of Board staff, added the term "insignia" to the provisions that would make it a crime to willfully use a badge or photographic identification card with the intent to fraudulently personate a state, county, city, or special district officer or employee. The amendments also provided an exception to the provisions of the bill for the use of a badge in the fictitious or historical visual depiction of either a public officer or employee, or a badge supplied by a recognized employee organization, as defined.

3. **All Board employees assigned to the Board's headquarter location are issued permanent security badges; all Board employees performing field audit or compliance work are issued permanent identification cards.** The protection and security of employees, equipment, and confidential information are important concerns of the Board. It is the Board's policy that all persons entering the security perimeter of the Capitol Square (headquarters) facility must wear security badges. The badges are coded for access to the building.

Additionally, identification cards are issued to employees holding positions that involve contact with the public away from their headquarter or district office location. The identification cards are issued to field auditors, tax representatives, and nonclerical supervisors. These employees examine confidential taxpayer information in the conduct of State business.

While the Board has no reported cases of stolen confidential taxpayer information, due to the increase in identity theft and other fraudulent schemes, the Board voted to sponsor legislation in order to deter the potential fraudulent use of a Board employee's badge to gain access to personal taxpayer information.

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- 4. This bill would deter the impersonation of a Board auditor or tax representative with the intent to gain access to confidential taxpayer information.** Board auditors and tax representatives conduct audits and investigations to verify that taxpayers have properly reported taxes or fees on their returns. As part of the audit or investigation, the auditor examines the taxpayers' records, which include, but are not limited to, federal or state income tax returns, financial statements, bank statements, summary records of business operations, invoices, and more. The auditor may request to conduct a portion of the audit at the district office which would require removing the taxpayer's records from the taxpayer's place of business to the district office. Audits and investigations also involve visiting and touring the taxpayers' premises.

While the Board has no reported cases of stolen identity and financial data, the Board has noted a few incidences involving falsified documents. In one incident, a taxpayer falsified an Escrow Demand Letter (BOE-874) and submitted the document to an escrow company to deceive the company into believing that the taxpayer had no tax liabilities. As a result, all proceeds from the sale of the property were released without the Board getting paid for the tax liability due. The Board's Fuel Tax Division has heard of incidences of forged Interstate Fuel Tax Agreement (IFTA) licenses and California Fuel Trip Permits and stolen IFTA decals. Finally, there have been a few cases involving falsified Board business cards.

In order to properly prosecute and punish those who misuse an authorized badge of a government employee, this bill would make it a crime to use a badge of a state, county, city, or special district officer or employee, with the intent of impersonating a state, county, city, or special district officer or employee.

- 5. Related Legislation. AB 215 (Leslie)** would amend Section 530.5 of the Penal Code related to identity theft to include persons who willfully obtain personal identifying information, as defined, with the intent to use the information for any unlawful purpose.

COST ESTIMATE

This bill would not impact the Board's administrative costs.

REVENUE ESTIMATE

This bill would not impact state revenues.

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